

# Setting up and running a retail premises

## Main topics

- Deciding to buy or lease your premises
- Pre-lease documentation
- Term of the lease
- Rent
- Condition of the premises
- Planning and building permits
- Government and other requirements
- Resolving disputes

## The basics:

- do some research to make sure you set up in the best possible location
- there are huge differences between buying premises, leasing premises and leasing in a shopping centre – make the right choice
- whether buying or leasing, find out what needs to be done **before** you sign
- for all retail leasing enquiries, both tenants and landlords should go **first** to the Victorian Small Business Commissioner website
- the Victorian Small Business Commissioner has a more than 75% success rate in mediating and resolving business disputes – they’re there to help

## Deciding to buy or lease your premises

### What is meant by a ‘retail premises’ and a ‘retail lease’?

A **retail premises** means any premises where the customer or client:

- buys goods
- hires goods
- is provided with services

A **retail lease** is regulated by the *Retail Leases Act 2003*. This legislation applies to most retail premises, but to make sure you’re covered, contact the Victorian Small Business Commissioner (contact details on last page).

### How ready are you to start?

Setting up a retail business involves a lot of work. How ready are you to start? Tick  Yes or No for the following questions:

|   | Yes | No |
|---|-----|----|
| Have you investigated the suitability of the location and the level of competition in the area where you want to run the business?              |     |    |
| Whether you're buying or leasing, do you know what your set up costs will be e.g. the cost of a complete fit out and finish?                    |     |    |
| Have you had discussions with the local council and are you sure a planning permit will be approved for your proposed business?                 |     |    |
| Have you also investigated the federal, state and council registrations, licences and permits which are required to run your business?          |     |    |
| Do you have good communication skills, and can you be persuasive with others when it comes to getting bills paid or negotiating a retail lease? |     |    |
| Will you have enough money to cover your set up costs and survive until the business starts to pay for itself?                                  |     |    |
| Have you developed a business plan for the first 12 months of operations, complete with projected costs and a cash flow statement?              |     |    |

If you had any ‘no’ answers, seek advice from an accountant or lawyer experienced in retail business issues. See Find an Adviser on the next page.

## Help for new starters:

- Business Victoria 13 22 15
- Go to: [business.vic.gov.au](http://business.vic.gov.au)
- Victorian Government Business Offices (see back page for details)

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### Buying, leasing, or leasing in a shopping centre?

The following table outlines the advantages and disadvantages of buying premises, leasing premises and leasing in a shopping centre. If you're unsure about your best option, you should seek advice from an accountant or lawyer with experience in retail business issues, or contact your industry association.

**Find an Adviser:** this is a Business Victoria database which will put you in touch with accountants and lawyers in your local area. Many advisers offer the first 30 minutes of their consultation for free (contact details on last page).

**Summary**

**Buying your premises** means you own the property and control how it can be used, but usually it also means a large, ongoing financial commitment.

**A retail lease** is a legally binding contract, where the tenant has the right to operate a business from the premises, but the landlord also has the right to place restrictions on how the premises can be used.

**Definition**

Under the Retail Leases Act, a shopping centre is a group of premises where:

- at least five of them are retail premises
- all premises are managed by the same landlord

|                                  | Advantages   | Disadvantages  |
|----------------------------------|--|--|
| <b>Buying</b>                    | <ul style="list-style-type: none"> <li>- the property usually becomes one of your major business assets</li> <li>- you enjoy the benefits of capital growth and secure tenure</li> <li>- no landlord means no restrictions, so you control how the property is used and developed (within planning guidelines)</li> <li>- you can claim depreciation of fixtures and fittings for tax purposes (also applies if you're leasing and doing the fitting out)</li> </ul>                               | <ul style="list-style-type: none"> <li>- setting up costs will usually be higher than leasing premises</li> <li>- no landlord means you take full financial responsibility for improvements, repairs, rates and all other ongoing expenses</li> <li>- you are subject to the increasing cost of real estate borrowing e.g. rising interest rates</li> <li>- if relocation becomes necessary, selling the premises could prove to be difficult</li> </ul>               |
| <b>Leasing</b>                   | <ul style="list-style-type: none"> <li>- setting up costs are usually less expensive than buying premises</li> <li>- possible sharing of specified costs with the landlord e.g. maintaining the premises</li> <li>- you are able to claim lease payments as business expenses for tax purposes</li> <li>- you have the flexibility of relocating to more suitable premises if your lease runs out, or problems arise which couldn't be predicted</li> </ul>  | <ul style="list-style-type: none"> <li>- money spent on rent does not contribute to your business assets or your capital growth</li> <li>- you are dependent on the landlord if modification, fitting out or maintenance work is needed</li> <li>- you can be legally liable for lease responsibilities after the lease has been assigned to someone else</li> <li>- for tax purposes, you are not able to claim depreciation on the actual building</li> </ul>        |
| <b>Leasing (shopping centre)</b> | <ul style="list-style-type: none"> <li>- huge concentration of foot traffic in one location, so businesses benefit from each other by attracting and keeping customers onsite</li> <li>- shopping centres are a growth industry, attracting big brand names and services like banks</li> <li>- common facilities, like car parking, loading bays, walkways, security and maintenance are for all tenants</li> <li>- tenants can often take advantage of advertising paid for by owner/s</li> </ul> | <ul style="list-style-type: none"> <li>- larger centres often have many similar businesses so it may be difficult to control your competition</li> <li>- rents are generally higher than shopping strips, and leasing terms and fit outs more restrictive</li> <li>- owner/s may have restructure plans that could force you to relocate to less desirable premises</li> <li>- you may not be able to sell the business or assign the lease to someone else</li> </ul> |

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### What needs to be done before you sign anything?

Before you commit to either buying or leasing, it's essential to make contact with the local council. Firstly, you need to check your proposed business will be permitted. Secondly, you need to check if there are any local government conditions which could affect your business. Commonly asked questions are:

- Is the premises in the right business zone?
- Do I need a planning permit?
- Will I need a building permit?
- What type of signage can I use?
- Can I use the footpath for advertising and/or trading?

### What needs to be done before you sign a retail lease?

Retail leases are not a case of 'one size fits all'. They are **negotiable**. Before you sign any documents, you need to negotiate with the landlord and agree to the specific conditions of your lease. Negotiations usually focus on:

- the term of the lease and options to renew
- rental payments and rental reviews
- permitted use of the premises and facilities
- operating expenses that will be shared
- conditions for reassignment of the lease
- obligations and rights of both tenant and landlord

■ **Who can help with negotiation?** Retail leasing law is complex so you may need to seek advice from an accountant or lawyer with experience in retail leasing issues. You should also consider membership of the Australian Retailers Association (ARA). The ARA has a Tenancy Advice service that helps tenants with the negotiation process for new leases, and with ongoing leasing issues e.g. rent reviews and lease renewals (ARA contact details on last page).

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## Pre-lease documentation

### What documents have to be given to a prospective tenant?

#### ■ Did you know?

The landlord must give a prospective tenant the Small Business Commissioner's Information Brochure. The brochure includes a checklist of what must be done **before and after** a lease is signed.

■ **New leases:** the landlord must give the tenant:

- the proposed lease as soon as the lease negotiations start
- a disclosure statement which includes an estimate of outgoings (additional operating expenses e.g. rates) at least seven days before signing the lease
- the Victorian Small Business Commissioner Information Brochure as soon as the lease negotiations start

Note: the landlord must also provide a copy (or photocopy) of the signed lease within 28 days after the lease has been signed by both parties

■ **Renewed leases:** the landlord must offer the tenant a new lease or inform them that the lease will not be renewed at least six months and no more than 12 months before the end of the lease. If the tenant chooses to renew, the landlord must give them a disclosure statement 21 days before the end of the current lease. When a lease does not contain further options but both parties agree to renew the lease, the landlord must give the tenant a disclosure statement within 14 days of entering into the agreement for renewal.

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### ■ Definition

A 'disclosure statement' is a document provided by the landlord which details all the important aspects of the lease e.g. rent reviews and obligations of both parties.

■ **Importance of the disclosure statement:** if the landlord fails to provide a disclosure statement the tenant has:

- the right to withhold rent and does not have to pay rent until the disclosure statement is given
- the option of terminating the lease

However, the tenant can only do this if they notify the landlord in writing (within 90 days of the lease starting) that they've not been given a disclosure statement.

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## Term of the lease

### ■ Further action

To improve your retail lease negotiating skills, download the **Checklist for a lease agreement that's right for you** at the Business Victoria website. Simply type the title into the homepage search.

### Does the landlord have to offer any minimum term?

The term of the lease must be at least five years, and any options given must be included in calculating the minimum term. The tenant can waive their right to the five year term if they apply to and get approval from the Victorian Small Business Commissioner (VSBC). At the VSBC website go to Retail Leasing on the homepage, then **5 year waiver certificate**. The application can be downloaded or completed online. A VSBC officer will contact you to explain how the waiver process works (VSBC contact details on last page).

### What happens at the end of the lease?

At least six months before, and no more than 12 months before, the end of the lease, the landlord must **either**, offer the tenant a new lease, or notify them that the lease will not be renewed. If notification is not sent during this period, the tenant can continue the lease for up to six months from when notification is sent.

### Can the tenant terminate before the end of the lease?

A tenant wanting to terminate before the end of a lease would be defaulting on the terms of the lease e.g. terms like 'rent payable until the lease ends'. They are legally bound by those terms, so changing them would require re-negotiation with the landlord (the other party to the legal contract). Before taking such a risk, they should seek advice from an accountant or lawyer experienced in retail leasing issues. The tenant can also contact the Victorian Small Business Commissioner (VSBC) and ask that re-negotiation with the landlord be handled by VSBC mediation (see Resolving disputes on last page).

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## Rent

### Can rent be reviewed and increased during a lease?

Rent can only be reviewed according to the conditions set out in the lease. Any review of the rent must also be based on the methods in the Retail Leases Act.

If the landlord and tenant cannot agree on the rent they should:

- go to Retail Leasing on the Victorian Small Business Commissioner (VSBC) website and download the **Information Brochure**
- speak directly with a VSBC officer by ringing 13 22 15

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### How are disagreements over rent resolved?

If the landlord and tenant cannot agree on the rent, a specialist retail valuer may be appointed. If the landlord and tenant cannot agree on the appointment of a specialist retail valuer, then as a last resort, either party can apply to the Victorian Small Business Commissioner (VSBC) to appoint one. The landlord and tenant will pay for the cost of this valuation in equal shares.

■ **Note on rent in VSBC mediation:** while disputes involving rent only cannot be mediated, rent is often raised as part of other issues in mediation sessions

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## Condition of the premises

### Who's responsible for maintenance and repairs to the premises during the lease?

Under the Retail Leases Act, the landlord is responsible for maintaining the premises in a condition which is consistent with the condition of the premises when the retail lease began. This includes:

- structure of the premises and fixtures
- plant or equipment in the premises
- appliances, fixtures or fittings related to services e.g. gas, electricity, water or drainage

■ **Note on condition of premises:** unlike residential properties, a Condition Report is not compulsory. However, it is recommended that the landlord and tenant each take photos and keep a brief written record of the general condition of the premises at the beginning of the lease. These records can often make it a lot easier to resolve disputes when the lease is terminated.

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## Planning and building permits

### Do you need a planning permit?

If you are ...

- setting up a new business
- modifying the premises
- changing the use of the property

... your first step is to find out from the local council if you need to apply for a planning permit. A planning permit is evidence that the council has approved your development. Make an appointment with a planning officer who will take you through the application process. You will be advised on the zoning of your land and any other relevant local planning guidelines e.g. heritage overlays.

■ **Note on 'changing the use':** even if you're not setting up a new business or modifying the premises, you may still need a planning permit if you start offering a new service or product. As an example, if you started opening at weekends, or serving alcohol, this could be considered to be 'changing the use of the property'. Always check with the local council planning department first. If you're not sure which council your premises is in, or you need council contact details, use Find Your Local Council (details on last page).

#### ■ Tip

If you're leasing premises, you should check the details of your lease agreement before modifying or changing the use of the premises. You will need to get the property owner's **written and signed permission**, which will be used in your permit applications to the council.

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### Will you need a building permit?

#### ■ Further action

To make contact with a registered building surveyor, get in touch with the council building department, or use **Find an RBP** (Registered Building Practitioner) at the Building Commission website (contact details on last page).

If modification work is involved, particularly structural work, both a planning permit and a building permit will probably be required. The building permit means a registered building surveyor has given approval for your building work to go ahead, and it ensures that building regulations will be followed. Common reasons for needing a building permit are to:

- construct a new building
- demolish all or part of a building
- alter or extend an existing building
- remove all or part of a building
- change the use of an existing building

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## Government and other requirements

### Other registrations, licences and permits

Apart from planning and building permits, the other registrations, licences and permits you need will depend on:

- what sort of retail premises you'll be running
- what activities your business will be undertaking

As an example, a typical shopping-strip clothing business will probably need to:

- **register a business or company name:** business name registration with Consumer Affairs Victoria, or company name registration with the Australian Securities and Investments Commission
- **register for tax:** Tax File Number, Australian Business Number, GST and PAYG withholding registrations with the Australian Taxation Office
- **set up and run a clothing business:** a planning permit and building permit from the local council
- **have clothes racks on the footpath:** a permit to display goods for sale on footpath or road from the local council
- **play recorded music:** music licences from the Australian Performing Rights Association and Phonographic Performance Company of Australia
- **put up an advertising sign:** a planning permit from the local council

#### ■ Watch out!

Sometimes people sign a retail lease, or even start trading, just because they've got a **verbal okay** from the council for a planning permit. You could be fined if you're found to be operating without all legally required permits, registrations and licences.

#### ■ Did you know?

An Business Licence and Information Service report can be:

- viewed immediately online
- emailed to you as a PDF
- saved to your Business Victoria account

### Use the Business Licence and Information Service

The easiest way to find out what local, state and federal registrations, licences and permits you'll need is to use the Business Licence and Information Service ([business.vic.gov.au/licences](http://business.vic.gov.au/licences)) at the Business Victoria website. Answer a few questions about your business and a report will be generated which has:

- all your required registrations, licences and permits
- downloadable application forms or links to online registrations
- contact details for the authorities you'll need to deal with

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### What about Occupational Health and Safety issues?

#### ■ Further action

According to WorkSafe some of the most common causes of injury in the retail sector are slips, trips and falls. The **Slips, Trips and Falls Checklist** has been designed specifically for those who work in retail premises. The checklist can be downloaded from the WorkSafe website (contact details on last page).

Whether you're the owner of your premises or a tenant, you are required by law to provide a safe and healthy workplace for employees, contractors, apprentices, trainees, customers, clients, visitors and the general public.

■ **WorkSafe Victoria:** the best source of occupational health and safety information is the WorkSafe Victoria website. On the homepage go to Safety and Prevention, then Your Industry, Retail and Fast Food.

■ **Free safety consultation:** businesses with up to 50 employees can register for a free three hour session with an independent health and safety consultant. The consultant will come to you, identify your hazards and provide you with a Safety Action Plan to make your workplace safer. You can register for a consultation online at the WorkSafe website (contact details on last page).

### What do you need to know about insurance?

As well as insuring your premises and contents against everyday risks like theft and fire, the following insurances can also be critical for retail businesses:

- **public liability:** covers personal injury or property damage sustained by customers, clients or visitors to your premises
- **product liability:** covers injury or damage caused by the products you manufacture, sell or supply as a service
- **professional indemnity:** covers financial loss sustained by clients which is caused by your supply of services or advice
- **motor vehicle insurance:** relevant if your vehicle is used for business purposes
- **WorkSafe Injury Insurance:** covers death, injury or illness suffered by employees as a result of their employment. WorkSafe Injury Insurance is compulsory for most employers.
- **personal injury and income protection:** relevant if WorkSafe Injury Insurance is not applicable to your business. Personal injury and income protection are often used by sole traders and partnerships because they are not considered by WorkSafe to be 'workers' in their own businesses. Income protection insurance is also tax deductible for small businesses.

#### ■ Tip

Insurance brokers are experts. They can arrange a business insurance package which is usually cheaper than taking out a number of individual policies. To find a broker in your area, visit the National Insurance Brokers Association website (web address is on last page).

### What else needs to go on your checklist?

This information sheet is not designed to be a complete guide. You will almost certainly have further questions to research and check off, depending on the requirements of your premises. Further questions could include:

- What are the trading times, delivery times and restricted trading days?
- Will you be putting up permanent and/or portable promotional signage?
- Can you use the footpath for advertising and/or trading?
- How accessible is your premises for those with a disability?
- Are there local laws controlling spruiking and other noise generation?
- If you're the owner, can you properly maintain 'essential safety measures'?

The best place to get answers to these questions is the local council where your business premises will be located. Also refer to the websites on the last page.

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### Resolving disputes

**Your first step:** in retail leasing conflict and disputes between landlords and tenants are a fact of life. If you find yourself in a dispute situation, your first step should be to try to resolve the issue. Speak directly and politely with the other party, and try to negotiate so both parties will be satisfied with the outcome. If it's possible, you should aim for a win/win rather than a win/lose outcome.

#### Did you know?

Mediation sessions can be arranged in both metropolitan and regional locations. VSBC statistics show that **more than 75%** of mediations are successfully resolved.

**Victorian Small Business Commissioner (VSBC):** if your first step fails you should contact the VSBC which provides a speedy and low cost dispute resolution process. The VSBC investigates disputes and organises mediation sessions between tenants and landlords with independent mediators. The aim is to help you resolve a dispute **before** it develops into legal action.

**Victorian Civil and Administrative Tribunal (VCAT):** for a matter to proceed to VCAT, the Small Business Commissioner must issue a certificate stating that mediation has been attempted and has failed. VCAT will conduct a formal hearing and make a determination. It also has the power to order a party who refuses to take part in VSBC mediation to pay the costs of the other party.

#### Further information and support

|  |   |   |
|--|---|---|
| <p><b>Get Business Victoria help to:</b></p> <ul style="list-style-type: none"> <li>- find an accountant or lawyer in your local area</li> <li>- find out about registrations, licences and permits</li> <li>- access VGBO support across Melbourne and Victoria</li> <li>- book into small business workshops and seminars</li> </ul> | <p>Business Victoria 13 22 15<br/>Victorian Consumer and Business Centre</p> <ul style="list-style-type: none"> <li>- walk in centre at 113 Exhibition Street, Melbourne</li> <li>Victorian Government Business Offices (VGBOs)</li> <li>- locations across metropolitan and regional Victoria</li> </ul> | <p><a href="http://business.vic.gov.au">business.vic.gov.au</a><br/><a href="http://business.vic.gov.au/findanadviser">business.vic.gov.au/findanadviser</a><br/><a href="http://business.vic.gov.au/licences">business.vic.gov.au/licences</a><br/><a href="http://business.vic.gov.au/vgbo">business.vic.gov.au/vgbo</a><br/><a href="http://business.vic.gov.au/workshops">business.vic.gov.au/workshops</a></p> |
| <p><b>Use Find Your Local Council to:</b></p> <ul style="list-style-type: none"> <li>- identify the council where your premises is located</li> <li>- get contact details for authorities you'll need to talk to</li> </ul>  | <p>Find Your Local Council online tool at Department of Planning and Community Development website</p>  | <p><a href="http://dpcd.vic.gov.au">dpcd.vic.gov.au</a></p>   |
| <p><b>Visit Small Business Commissioner website to:</b></p> <ul style="list-style-type: none"> <li>- get downloads e.g. the Information Brochure which landlords must give to prospective tenants</li> <li>- find out how retail tenancy disputes are resolved</li> </ul>  | <p>Victorian Small Business Commissioner (VSBC)</p> <ul style="list-style-type: none"> <li>- to speak with a VSBC officer: 13 22 15</li> <li>- investigations line: (03) 9651 9316</li> </ul>   | <p><a href="http://sbc.vic.gov.au">sbc.vic.gov.au</a></p>   |
| <p><b>Visit VCAT website to:</b></p> <ul style="list-style-type: none"> <li>- find out more about retail tenancy disputes and investigate the Retail Tenancy List</li> <li>- find out what VCAT fees apply and download forms</li> </ul>   | <p>Victorian Civil and Administrative Tribunal for Retail Tenancy List questions ring (03) 9628 9960</p>  | <p><a href="http://vcat.vic.gov.au">vcat.vic.gov.au</a></p>   |
| <p><b>Visit WorkSafe Victoria website to:</b></p> <ul style="list-style-type: none"> <li>- apply for a free safety consultation</li> <li>- download the Slips, Trips and Falls checklist</li> </ul>  | <p>WorkSafe Victoria<br/>for all enquiries ring 1800 136 089</p>  | <p><a href="http://worksafe.vic.gov.au">worksafe.vic.gov.au</a></p>   |
| <p><b>Visit Australian Retailers Association website to:</b></p> <ul style="list-style-type: none"> <li>- investigate the benefits of membership e.g. getting personalised assistance to negotiate a lease</li> </ul>  | <p>Australian Retailers Association<br/>for all enquiries ring 1300 368 041</p>   | <p><a href="http://retail.org.au">retail.org.au</a></p>   |
| <p><b>Visit Building Commission website to:</b></p> <ul style="list-style-type: none"> <li>- use Find an RBP (Registered Building Practitioner) to locate a registered building surveyor in your area</li> </ul>   | <p>Building Commission Victoria<br/>for all enquiries ring 1300 815 127</p>   | <p><a href="http://buildingcommission.com.au">buildingcommission.com.au</a></p>   |
| <p><b>Visit National Insurance Brokers website to:</b></p> <ul style="list-style-type: none"> <li>- find out more about the range of business insurances and locate an insurance broker in your area</li> </ul>  | <p>National Insurance Brokers Association<br/>for all enquiries ring (02) 9964 9400</p>   | <p><a href="http://niba.com.au">niba.com.au</a></p>   |

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